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December 13, 2024

VIA ECF

Honorable Naomi Reice Buchwald
United States District Judge
United States District Court
Southern District of New York
500 Pearl St., Courtroom 21A
New York, NY 10007

Re: DRE Health Corporation (“DRE”) v. Two Canoes, LLC (“TC”), 1:23-cv-10643-NRB

Dear Judge Buchwald:

As you are aware, this firm represents Defendant TC in the above-referenced action (the “Action”). We write jointly with counsel for DRE to update the Court on the status of the Action.

The parties continue to work with an agreed-upon laboratory for the confidential testing of samples in DRE’s possession for settlement purposes only, as described in our recent status update to the Court (Dkt. 19). Samples have been submitted to and received by the laboratory. The expected completion date for testing is 12/31/24.

Assuming that the testing is completed as estimated above, the parties respectfully request two weeks to negotiate a settlement based upon the test results. If the parties are unable to reach an amicable resolution in this time frame, they intend to advise the Court of the negotiated briefing schedule for TC’s anticipated motions to dismiss and for fees pursuant to Rule 41(d). Notwithstanding the foregoing, DRE has indicated that it objects to TC’s intent to file a motion for fees pursuant to Rule 41(d) on the basis that the Court discouraged filing a 41(d) motion during the pre-motion conference on March 7, 2024. This position is incorrect. Specifically, at the March 7th pre-motion conference, Your Honor expressly confirmed that TC was permitted to file such a motion simultaneously with its motion to dismiss, and that Your Honor would give such a motion fair consideration notwithstanding the court’s preliminary view of the issue. TC also disputes that the omission of a reference to the 41(d) motion in any previous letter to the Court somehow constitutes a waiver of the express permission it received from the Court to file such a motion.

Accordingly, the parties respectfully request an additional extension through January 17, 2024, and will either advise the court of a settlement or submit a briefing schedule by this deadline.



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We appreciate the Court's patience and ongoing assistance in this matter, and remain available should the Court require any additional information.

Application granted.
So ordered.

A handwritten signature in blue ink, reading "Naomi Reice Buchwald".
NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

Dated: December 16, 2024
New York, New York

cc: Counsel of Record via ECF

Respectfully submitted,

/s/ Michael G. Goldberg

Michael G. Goldberg